

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ELAN MICROELECTRONICS  
CORPORATION,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No.: C 09-01531 RS (PVT)

**ORDER RE PARTIES' PROPOSED  
STIPULATED PROTECTIVE ORDER**

On January 22, 2010, the parties filed a proposed stipulated protective order regarding the disclosure and use of discovery materials in the above-captioned action. Having reviewed the proposed stipulated protective order,

IT IS HEREBY ORDERED that the parties shall submit a revised form of the proposed order that rewords Paragraph 16 to read as follows:

“Each party shall make efforts that are ‘reasonably designed’ to protect its privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What constitutes efforts that are reasonably designed to protect privileged materials depends on the circumstances; the law does not require ‘strenuous or Herculean efforts,’ just ‘reasonable efforts.’ *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, \*1-\*2 (ND Cal., Feb. 2, 2008); *see also*, FED.R.CIV.PRO. 26(f)(3) advisory committee’s notes to 2006 amendments (discussing the substantial costs and delays that can result from attempts to avoid waiving privilege, particularly when discovery of electronic information is involved). When a particular Rule 34 request requires a production or inspection that is too voluminous, expedited or complex (such as certain electronic productions) to allow for an adequate pre-

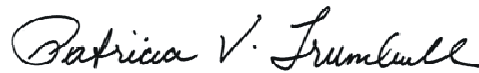
1 production review, the parties may enter into non-waiver agreements for that  
2 particular production. If the requesting party is unwilling to enter into such an  
agreement, the Producing Party may move the court for a non-waiver order.

3 "In the event that, despite reasonable efforts, a Producing Party discovers it  
4 has inadvertently produced privileged materials, then within 30 calendar days the  
Producing Party shall notify the Receiving Party that the document(s) or materials  
5 should have been withheld on grounds of privilege. After the Receiving Party  
receives this notice from the Producing Party under this paragraph, the Receiving  
6 Party shall not disclose or release the inadvertently produced material to any person  
or entity pending resolution of the Producing Party's claim of privilege. The parties  
7 shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as  
reasonably possible after a notice of inadvertent production. If the Producing Party  
8 and Receiving Party agree that the inadvertently produced material is privileged, and  
was disclosed despite efforts by the Producing Party that were 'reasonably designed'  
9 to protect the materials, then the Receiving Party shall return or certify the  
destruction of all copies (including summaries) of such material. If no agreement is  
10 reached, then within 10 court days after the meet and confer, the Producing Party  
must seek a ruling from this court to establish that the material is privileged and that  
11 the Producing Party did not waive the privilege by inadvertently producing the  
material. If the Producing Party seeks such a ruling, the Receiving Party shall not  
12 disclose or release the inadvertently produced material to any person or entity  
pending the court's ruling on the Producing Party's motion."

13 IT IS FURTHER ORDERED that, pending entry of the final form of protective order, the  
14 provisions of the parties' proposed form of protective order, as modified herein, shall govern the  
15 handling of confidential information exchanged or disclosed during discovery in this case.

16 IT IS SO ORDERED.

17 Dated: January 25, 2010



18 PATRICIA V. TRUMBULL  
19 United States Magistrate Judge  
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